

**DEPARTMENT OF THE ARMY
Wilmington District, Corps of Engineers
Post Office Box 1890
Wilmington, North Carolina 28402-1890**

Action ID No. 200530125

October 28, 2004

PUBLIC NOTICE

BLUEGREEN CORPORATION, 128 THE PRESERVE TRAIL, CHAPEL HILL, NC 27517 has applied for a Department of the Army (DA) permit **TO PLACE FILL WITHIN 441 LINEAR FEET OF STREAM CHANNELS WHICH ARE UNNAMED TRIBUTARIES TO THE LEFT PRONG OF THE CATAWBA RIVER, IN ORDER TO CONSTRUCT AN ADDITIONAL PHASE OF THE RESIDENTIAL DEVELOPMENT KNOWN AS CATAWBA FALLS**, located on the north side of Mt. Hebron Church Road, Southwest of Old Fort, McDowell County, North Carolina.

The following description of the work is taken from data provided by the applicant. The entire property consists of approximately 768 acres with 365 acres comprising an additional development phase that will be addressed with this Public Notice. Plans submitted with this application show the proposed placement of fill material into 440 linear feet of stream channel associated with the construction of three road crossings. The purpose of the proposed work is to provide road access to the residential lots associated with the remainder of the development. A previous enforcement action, pursuant to Section 404 of the Clean Water Act, has occurred on the existing (first) phase of this project in which approximately 286 linear feet of stream channel was filled for road construction. Currently, stream and wetland restoration activities are occurring on this phase in order to resolve the existing enforcement action.

Proposed impacts associated with the construction of the three road crossings will include the placement of fill into approximately 440 linear feet of stream channel. Attached plans depict the following impact areas: Impact #6 proposes 220 linear feet of impact, Impact #9 proposes 80 linear feet of impact, and Impact #10 proposes 140 linear feet of impact. All of these impacts are associated with the placement of appropriately sized culverts into the existing stream channel and all are proposed to occur in unnamed tributaries to the Left Prong of the Catawba River. These tributaries were determined to be perennial stream channels of good quality. They typically have small watersheds with the main source of hydrology occurring from groundwater seeps/springs and overland flow. They also exhibit intact, forested riparian buffers in a relatively undisturbed watershed.

The applicant proposes to mitigate for impacts to jurisdictional stream channels through payment into the North Carolina Ecosystem Enhancement Program (NCEEP) in an amount necessary to restore 440 linear feet of stream channel in the Catawba River Basin. In addition, the applicant has proposed to preserve the remaining streams and a 50-foot forested buffer (25-feet both sides) on the property via restrictive covenants.

The State of North Carolina will review this public notice to determine the need for the applicant to obtain any required State authorization. No Department of the Army (DA) permit will be issued until the coordinated State viewpoint on the proposal has been received and reviewed by this agency, nor will a DA permit be issued until the North Carolina Division of Water Quality (NCDWQ) has determined the applicability of a Water Quality Certificate as required by PL 92-500.

This application is being considered pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344). Any person may request, in writing within the comment period specified in the notice, that a public hearing be held to consider this application. Requests for public hearing shall state, with particularity, the reasons for holding a public hearing.

The District Engineer has consulted the latest published version of the National Register of Historic Places for the presence or absence of registered properties, or properties listed as being eligible for inclusion therein. Based on the best available evidence from the North Carolina Department of Cultural Resources, it has been determined that no sites within the vicinity of the project are registered or listed as being eligible for inclusion in the Register. Examination of the National Register of Historic Places constitutes the extent of cultural resource investigations by the District Engineer, and he is otherwise unaware of the presence of other such resources. Presently, unknown archeological, scientific, prehistorical, or historical data may be lost or destroyed by work under the requested permit.

The District Engineer, based on available information and previous correspondence with the U.S. Fish and Wildlife Service, Asheville Regional Office, is not aware that the proposed activity will affect species, or their critical habitat, designated as endangered or threatened pursuant to the Endangered Species Act of 1973. By copy of this public notice, we are hereby requesting comments from the U.S. Fish and Wildlife, Asheville Regional Office, regarding the proposed project's potential impact to federally endangered or threatened species and/or their potential and critical habitat.

The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts, which the proposed activity may have on the public interest, requires a careful weighing of all those factors which become relevant in each particular case. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process. That decision should reflect the national concern for both protection and utilization of important resources. All factors, which may be relevant to the proposal, must be considered including the cumulative effects thereof. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards and flood plain values (in accordance with Executive Order 11988), land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral

needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving the placement of dredged or fill materials in waters of the United States, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines or criteria, a permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials; Indian Tribes and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

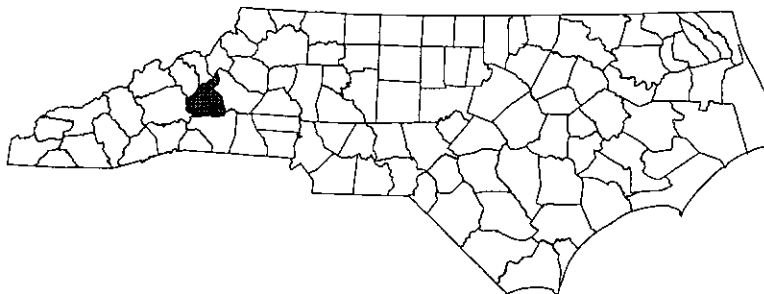
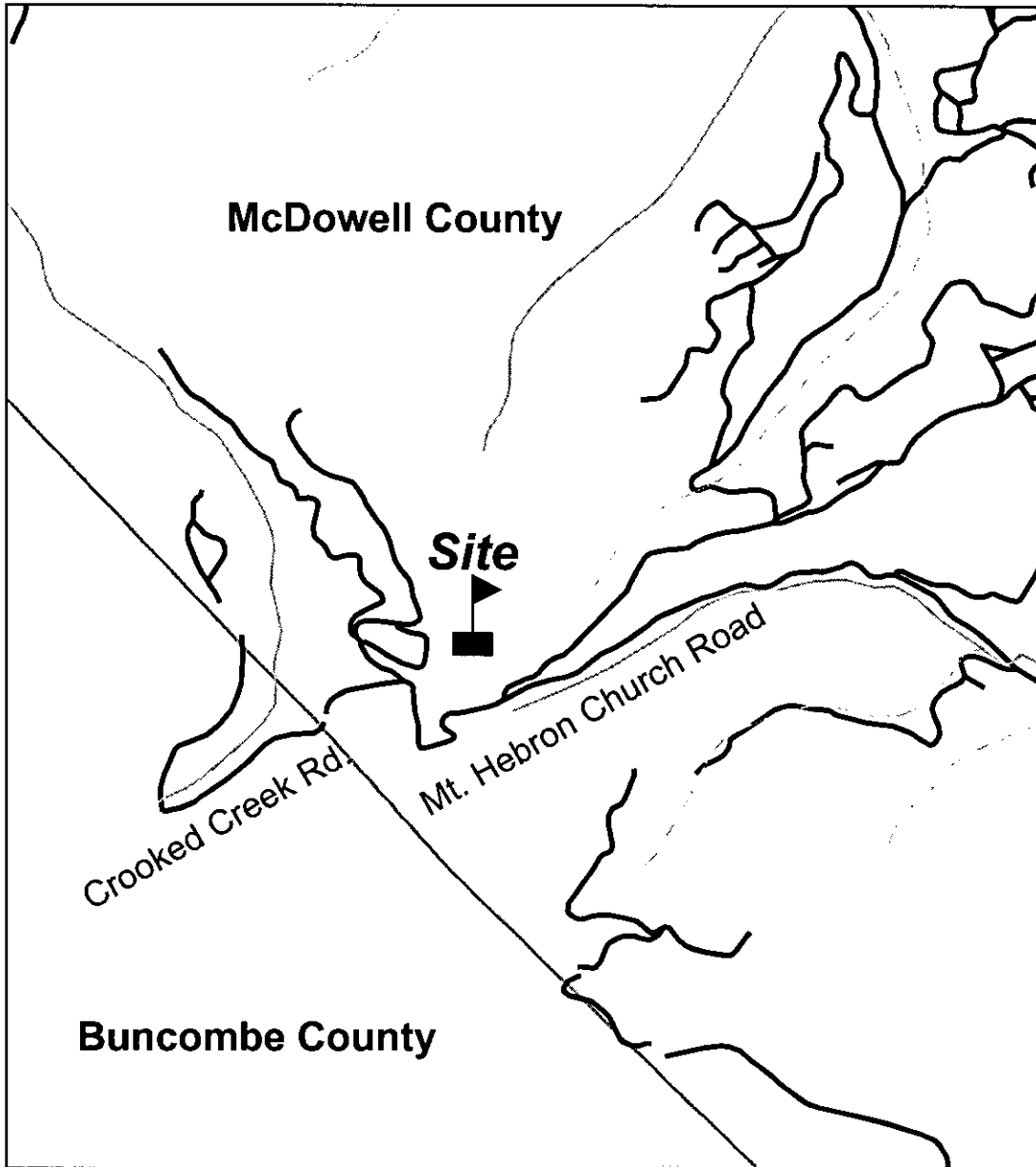
Generally, the decision whether to issue this Department of the Army (DA) permit modification will not be made until the North Carolina Division of Water Quality (NCDWQ) issues, denies, or waives State certification required by Section 401 of the Clean Water Act. The NCDWQ considers whether or not the proposed activity will comply with Sections 301, 302, 306, and 307 of the Clean Water Act. The application and this public notice for the Department of the Army (DA) permit serves as application to the NCDWQ for certification.

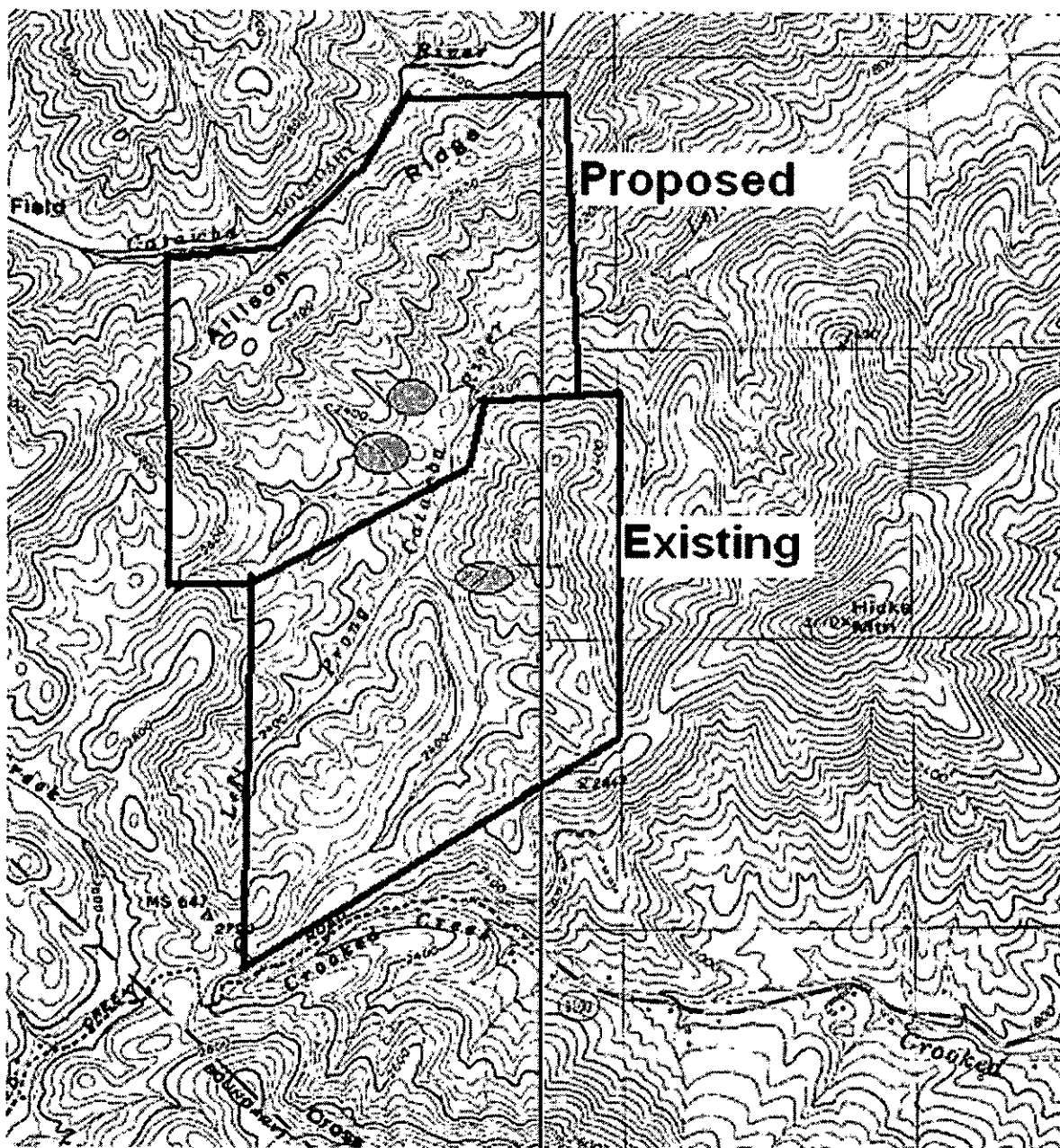
Additional information regarding the Clean Water Act certification may be reviewed at the offices of the Wetlands /401 Unit, North Carolina DENR, Division of Water Quality, 2321 Crabtree Boulevard, Raleigh, North Carolina. Copies of such materials will be furnished to any person requesting copies upon payment of reproduction costs.

All persons desiring to make comments regarding the application for Clean Water Act certification should do so in writing delivered to the North Carolina Division of Water Quality (NCDWQ), Wetlands/401 Unit, 1650 Mail Service Center, Raleigh, North Carolina, 27699-1650, on or before November 19, 2004, Attention: Ms. Cindy Karoly.

Written comments pertinent to the proposed work, as outlined above, will be received in this office, Attention: Ms. Amanda Jones, until 4:15 p.m. on November 26, 2004 or telephone (828) 271-7980 extension 231.

Vicinity Map



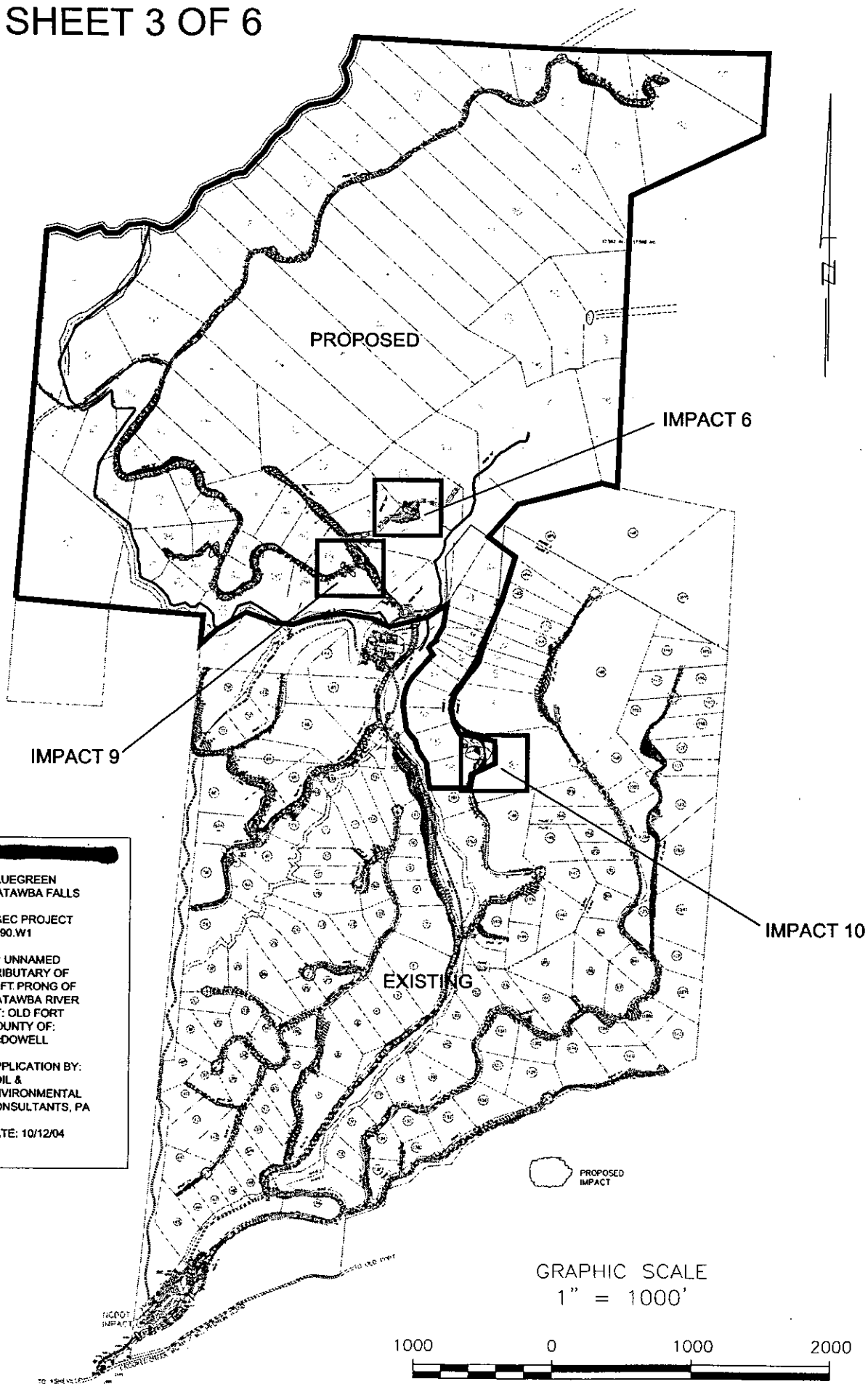


Project boundaries are approximate
Source of map: Moffitt Hill and Black Mtn. USGS Quadrangle
AID 200530125



Proposed Impact Areas

SHEET 3 OF 6

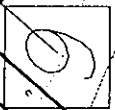


PROPOSED IMPACT:

220 LIN. FT.

SHEET 4 OF 6

DRIVE "N7"



IMPACT 6

GRAPHIC SCALE
1" = 50'



BLUEGREEN
CATAWBA FALLS
S&EC PROJECT
8190.W1
IN: UNNAMED
TRIBUTARY OF
LEFT PRONG OF
CATAWBA RIVER
AT: OLD FORT
COUNTY OF:
MCDOWELL
APPLICATION BY:
SOIL &
ENVIRONMENTAL
CONSULTANTS, PA
DATE: 10/12/04

GRAPHIC SCALE
1" = 50'



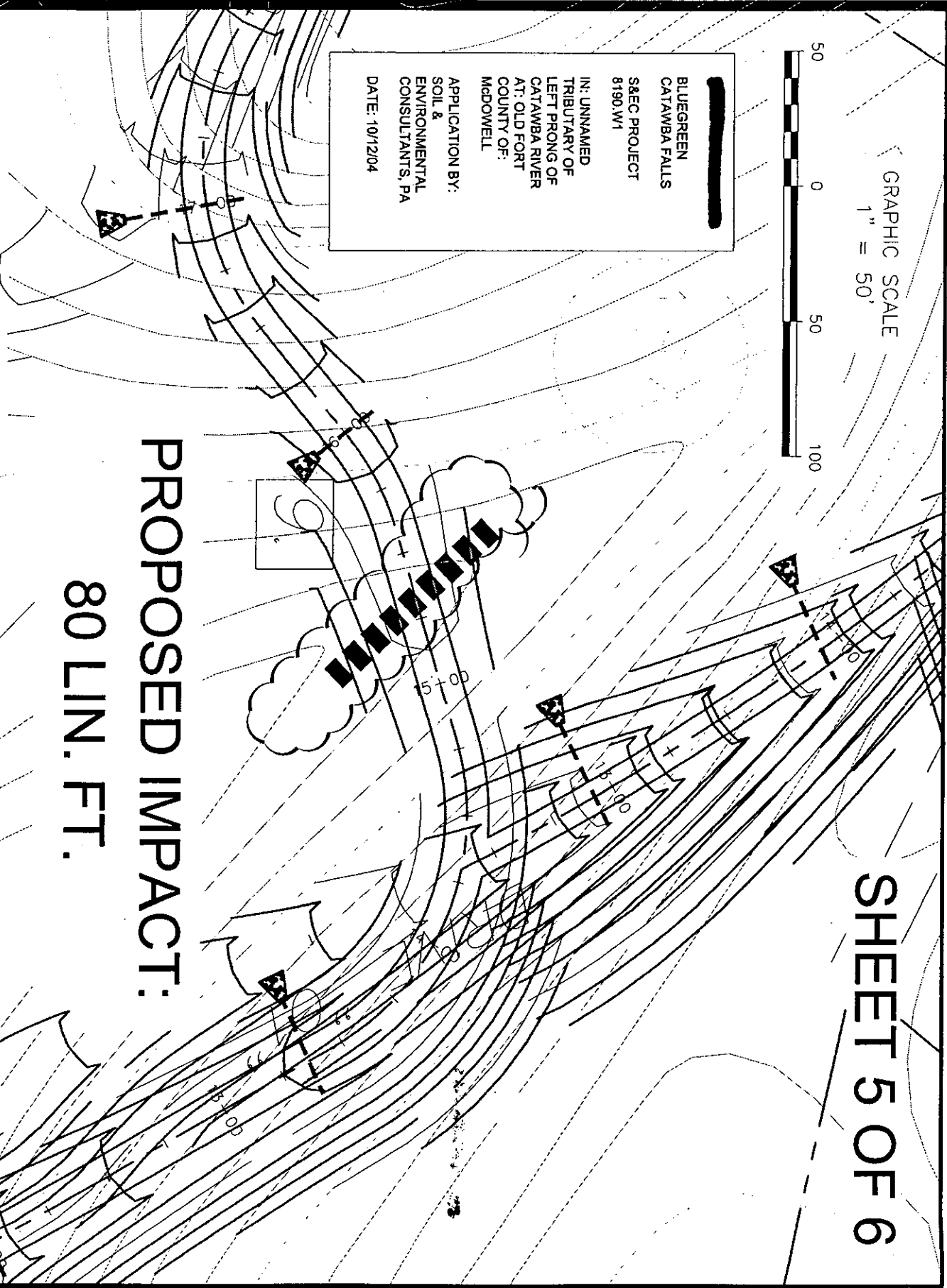
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CONSULTANTS, PA
DATE: 10/12/04

SHEET 5 OF 6

PROPOSED IMPACT:

80 LIN. FT.

IMPACT 9



10

SHEET 6 OF 6

GRAPHIC SCALE
1" = 50'



**BLUEGREEN
CATAWBA FALLS
S&EC PROJECT
8190.W1**

IN: UNNAMED
TRIBUTARY OF
LEFT PRONG OF
CATAWBA RIVER
AT: OLD FORT
COUNTY OF:
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CONSULTANTS, PA

DATE: 10/12/04

PROPOSED IMPACT:

140 LIN. FT.

IMPACT 10

